

Law Department

UNION PACIFIC RAILROAD COMPANY

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Office of Proceedings



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October 23, 2003

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309204



The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

RE: Docket No. AB-33 (Sub-No. 132X) – Union Pacific  
Railroad Company – Abandonment Exemption – In Rio Grande and  
Mineral Counties, CO

Dear Mr. Williams:

We have discovered from the Board's website that, on or about October 14, 2003, the City of Creede made a large filing (nearly 500 pages) misleadingly entitled "City of Creede's Submission of Materials Compiled During U.S. District Proceeding". We have viewed portions of this filing on the website and, contrary to its title, it is not merely a transmittal of court materials. Rather, it is a petition requesting the Board to reopen the above proceeding to "revoke the OFA rights" obtained by the Denver & Rio Grande Railway Historical Foundation. This is an apparent reference to the Board's decision served May 11, 1999 authorizing the Foundation to acquire the line under 49 U.S.C. 10904. The sale in question was consummated on May 24, 2000, and a notice of consummation was filed with the Board on May 26, 2000.

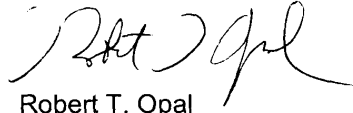
UP respectfully requests the Board to reject Creede's "Submission" for failure to comply with the service requirements of Board's rules of practice. The Board's rules specifically require that documents filed with the Board in a proceeding be served on all parties to the proceeding and include a certificate showing that the required service was made, 49 C.F.R. 1104.12. UP has not received a copy of the "Submission" and, based on the certificate of service accompanying it (p. 29) was not even served.

There is, of course, no question that UP is a "party" to Docket AB-33 (Sub No. 132X) (it is, in fact, the party that originally instituted the proceeding) and is entitled to be served with any documents filed in that proceeding. Creede had to know this, both from

its previous participation in the proceeding and from the very title of the case. Further, the relief that Creede is now seeking -- which would appear to require UP to unwind an OFA sale that was consummated over 3 years ago -- would obviously affect UP's interests. There is, thus, no excuse for Creede's failure to serve UP. The Board's posting of the "Submission" on its website is not a substitute for the service required by the Board's rules, particularly for a filing nearly 500 pages in length.

An additional ten (10) copies of this letter and the attached Certificate of Service are enclosed for the Board's files.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. T. Opal", written over a horizontal line.

Robert T. Opal  
General Commerce Counsel  
Phone: (402) 271-3072  
Fax: (402) 271-5610

cc: Persons shown on Certificate of Service

Enc.

**CERTIFICATE OF SERVICE**

I certify that I have this date served a copy of the foregoing document upon the persons shown below. Service was made by UPS Overnight (except as shown) with delivery charges prepaid.

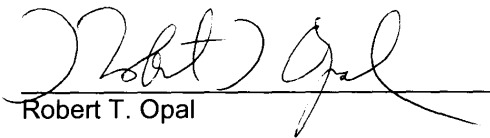
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Hon. B. J. Meyers  
Mayor, City of Creede  
P.O. Box 457  
Creede CO 81130  
(via First Class Mail)

Dated at Omaha, Nebraska this 23<sup>rd</sup> day of October, 2003.

  
Robert T. Opal